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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1964

128

ROY A. DICKIE, ASSIGNEE OF WHITAKER & CO., INC., *Petitioner*

v. No. [redacted]

SEWER IMPROVEMENT DISTRICT NO. 1 OF DARDANELLE, ARKANSAS; DAN KEENAN, HAROLD SNYDER, AND LEWIS A. WEBB, SUCCESSOR COMMISSIONERS OF SAID DISTRICT.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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Roy A. Dickie, Assignee of Whitaker & Co., Inc., petitions for a writ of certiorari to review the judgment of the Court of Appeals for the Eighth Circuit, entered in this case on March 2, 1964.

OPINIONS BELOW

The opinion of the District Court is a letter opinion not reported (R. 204) (App. B, infra, p. 4). The opinion of the Supreme Court of Arkansas, referred to in the District Court opinion, is reported at 229 Ark. 697, 318 S. W. 2d 831 (App. B, infra, p. 7). The opinion of the Court of Appeals is reported at 328 F. 2d 296 (App. B, p. 18).

Earlier opinions of the Court of Appeals on aspects of this litigation, relevant but not to be reviewed, are reported at 109 F. 2d 710 (App. C, p. 25) and at 221 F. 2d 649 (App. C, infra, p. 32).

JURISDICTION

The judgment of the court of appeals (App. D, infra, p. 61) was entered on March 2, 1964. The jurisdiction of this Court is invoked under 28 U. S. C. Section 1254(1).

QUESTIONS PRESENTED

The Federal Court rendered a judgment in 1937 against the respondent sewer district, which was assigned to petitioner, based on bonds issued by the sewer district and a mortgage securing their payment. To enforce the judgment, a Federal Receiver of the affairs and property of the sewer district foreclosed liens in State court (pursuant to authority of the federal court) upon lands delinquent for nonpayment of assessments, the lands being sold to the sewer district at the foreclosure sale in 1941, the landowners having five years from the date of sale to redeem under an applicable state statute, following which, in 1956, the Federal court adjudged that lands unredeemed within that time was not to be permitted to be redeemed and had become assets of the sewer district for liquidation in satisfaction of the Federal judgment rendered in 1937. In 1959 the Supreme Court of Arkansas construed and applied a state redemption statute in such a way as to permit the former landowners, over 16 years after the foreclosure sale, to redeem the lands (heretofore sold to the sewer district for the benefit of petitioner and to enforce the Federal judgment). In 1960 the Federal court gave full faith and credit to the State court decision and denied petitioner writs of execution and other relief against the lands and sewer district involved.

Questions presented are:

1. Whether the State court decision and application of a five-year state redemption statute (to permit redemption over 16 years following sale of the lands involved) was unlawfully given full faith and credit in this Federal proceeding.

2. Whether the application of the redemption statute in such manner and giving full faith and credit to the state court decision deprived petitioner of property rights without due process of law in violation of Amendment 14 and Amendment 5 of the Constitution of the United States.

3. Whether the application of the redemption statute in such manner impaired the obligation of a contract in violation of Article I, Section 10, of the Constitution of the United States.

4. Whether the adjudication of the Federal court in 1956 that the lands involved were not subject to redemption and had become assets of the sewer district (for satisfaction of petitioner's judgment) was conclusive of that issue and not subject to being superseded and interfered with by the subsequent State court decision to the contrary and by the Federal court's then giving controlling effect to the State court decision.

5. In the Federal proceeding was it error to apply a 1958 and 1959 construction of a state law by the State court rather than the construction in effect at the time rights in the land became vested in the sewer district and petitioner.

6. Whether the State court decision constituted unlawful interference with Federal jurisdiction over the property and subject matter.

7. Whether the Federal court erred in denying writs of execution against the lands claimed to have become

vested in the sewer district and denying alternative relief to the end of fulfilling and enforcing federal judgments and mandatory orders theretofore rendered in the federal proceeding.

STATUTES INVOLVED

Statutes and provisions of the Constitution of the United States involved are the following, which are printed in Appendix A, infra, p. 1:

Arkansas statutes: Kirby & Castle Digest of the Arkansas Statutes (1916): Sections 6873 and 6874 (Act 43 of February 9, 1915, Section 1) and Section 6903 (Act 84 of March 22, 1881); Arkansas Statutes 1947 Annotated, Vol. 2B, Sections 20-444 and 20-445 (Act 207 of 1937, Sections 4 and 5) and Section 20-446.1 (Act 195 of 1949, Section 21).

(The sewer district involved in the action was organized under Kirby's Digest of the Statutes of Arkansas (1911), Sections 5664 to 5742. (Act 84 of March 22, 1881), as amended to the time of its organization in 1917, and the statutes cited in the foregoing paragraphs, appended hereto, are provisions deemed directly involved, together with provisions of Arkansas statutes which were enacted after the sewer district was formed and the bonds and mortgage referred to herein were issued).

Federal statutes: 28 U. S. C. Section 1738, Act June 25, 1948, C. 646, 62 Stat. 947. (Full faith and credit clause).

Constitutional provisions: Article 1, Section 10 (impairment of contract clause); Amendment 5 (due process of law clause); Amendment 14 (due process of law and equal protection clauses).

STATEMENT OF THE CASE

In 1917, the respondent sewer district issued $32,500.00 of bearer bonds to finance construction of a sewer improvement, mortgaging the assessed benefits on property in the sewer district to secure payment of the bonds (R. 5, 16).

The sewer district defaulted in payment of the bonds, and, in 1936, Whitaker & Co., Inc., on behalf of the bondholders brought this action in the Federal Court, jurisdiction being based on diversity of citizenship, plaintiff being a citizen of Missouri and defendants being citizens of Arkansas (R. 4).

On October 1, 1937, the Federal Court rendered judgment for Whitaker & Co., Inc. against the sewer district ($28,074.01, plus costs), the amount being later enlarged by supplemental decree in 1939 by an additional $2,762.20, the whole bearing interest at 6% per annum (R. 19, 25).

A Receiver was appointed by the Federal Court to take over the affairs of the district and to collect the unpaid assessments on property in the district and apply the proceeds to the Federal judgment (R. 21, 97), and to that end, the Federal Receiver sued in the State Court (Chancery Court of Yell County, Arkansas) in 1939 to foreclose the sewer district's liens for delinquent assessments against lands in the sewer district for the purpose of fulfilling and satisfying the Federal Court judgment.

In 1940, it was determined by the Court of Appeals for the Eighth Circuit, in this Federal Court proceeding, that Whitaker & Co., Inc. held first lien on the uncollected assessments of the sewer district, the lien being established by the final judgment of the Federal Court in 1937, supra. (*Whitaker & Co.* v. *Grable*, 109 F. 2d 710; App. C, infra, p. 25).

The Federal Receiver proceeded in the State Court with the foreclosure suit, and, in 1941, the State Court ren-

dered foreclosure decree and ordered the delinquent lands sold at foreclosure sale, which was held on December 1, 1941, at which the sewer district became the purchaser of a number of parcels of the land (R. 88 and 109). The sale of lands to the sewer district was confirmed and approved by the State Court on December 16, 1941, and it was ordered by the State Court that deeds be issued to the sewer district on expiration of the statutory period of redemption (R. 109). The period allowed land owners for redemption was 5 years from the date of foreclosure sale and the period expired December 1, 1946 (R. 95, 96; Kirby & Castle Digest of the Statutes of Arkansas, Section 6874, Act 43 of 1915 of Arkansas, Section 1, App. A, infra, p. 1).

During the following years, the proceedings in the Federal Court in this action, and the proceedings incident thereto in the State Court, have been to the end of enforcing and satisfying the federal judgment rendered in 1937 and 1939 (R. 19, 25), which, by assignment from Whitaker & Co., Inc. to Petitioner here, became the property of Petitioner (R. 26). During the years, some collections of assessments were made on some properties situated within the improvement district, and proceeds were applied against the federal judgment; but the amounts were small and the judgment balance (with interest accruing) now and still amounts to over $55,000.00 (R. 46A).

After the period allowed for land owners to redeem property from the State Court foreclosure sale had expired, the deeds which the State Court had ordered issued to the district were in fact not issued to the sewer district; various commissioners of the sewer district died and resigned (R. 59); other Federal Receivers were appointed, in succession; and the sewer district did not take actual possession of the lands which it had purchased at the foreclosure sale and which remained unredeemed, although efforts to the end of establishing the sewer district's owner-

ship, for the benefit of Petitioner here in enforcement and satisfaction of Petitioner's Federal Court judgment have continued to be made and judgments relating to the lands and Petitioner's rights have been rendered both in State Courts and in the Federal Court, the effect of which will be before this Court if this petition for writ of certiorari is granted.

In January and March, 1956, by two orders (R. 90 and 96), the Federal Court adjudged that the period for redemption of the lands which had been sold to the sewer district (for the benefit of Petitioner) at the foreclosure sale in State Court in 1941 had expired on December 1, 1946, and that the lands remaining unredeemed within the period from the date of sale to December 1, 1946, were assets of the sewer district, for the benefit of Petitioner, and that redemption of lands by the former landowners was not to be allowed by the Federal Receiver in charge of the affairs and property of the district, where the period for redemption had expired as stated (R. 90 and 96, App. D, infra, p. 48, 49). At that time the parties to this action also stipulated that the period of redemption expired on December 1, 1946 (R. 95).

This was a Federal Court decision on the merits in this diversity suit, which became final and from which no appeal has been taken.

Subsequently, for the first time, the Federal Court's attention was called to another statute of Arkansas which purported to prohibit the appointment of Receivers for improvement districts generally, and the Federal Court, by order rendered September 24, 1956, substituted the commissioners of the sewer district for the Federal Receiver, ordering them to proceed to do what the Receiver had been ordered to do, to liquidate the assets of the sewer district and apply them toward satisfaction of the Federal judgment, at the same time adjudging that all past acts of the

Federal Receiver were valid and effective (R. 143, 146, 147).

On December 12, 1956, the Federal Court ordered the commissioners of the sewer district to obtain from the State Court a determination as to the validity of the 1941 foreclosure sale in State Court, since the Federal Receiver had brought the foreclosure proceedings in the State Court (by authority of the Federal Court) instead of commissioners of the sewer district (R. 157-159).

Shortly thereafter, the United States District Judge, who had presided over the litigation in Federal Court from the beginning, Judge Thomas C. Trimble, became inactive as United States District Judge, his last participation in this litigation having been in May, 1957 on a matter not pertinent here (R. 165).

Pursuant to Judge Trimble's prior orders, the commissioners of the sewer district were then in process of obtaining a determination in the State Court on the validity of the foreclosure sale in the suit brought years earlier by the Federal Receiver (R. 108). A claimed land owner intervened in the State Court proceeding (R. 111) and Petitioner also intervened in the proceeding (R. 181). The State Court proceeding was underway when Judge Trimble became inactive.

The State Court rendered a decision on March 17, 1958 that the 1941 foreclosure sale in the suit brought by the Federal Receiver was valid and effective. It ruled further that the federal receivership was also valid and that all acts of the Federal Receiver were effective (as the Federal Court had earlier ruled, supra [R. 143, 146, 147], but the State Court proceeded beyond those matters in its decision and decided also (contrary to the Federal Court's earlier decision on the point) that the former land owners could redeem their lands from the foreclosure sale over 16 years

after the sale of the lands to the sewer district which had been held in 1941 for the purpose of liquidation and satisfaction of the federal judgment in this action. The State Court decision was appealed to the Supreme Court of Arkansas, which affirmed, holding that the federal receivership and all acts of the Receiver and the foreclosure sale in 1941 in State Court were valid and effective, but holding further, on general principles of equity, that the former land owners could, over 16 years later redeem their land from the foreclosure sale, notwithstanding expiration of the statutory period of redemption. *Whitaker & Company, et al, v. Sewer Improvement District No. 1 of Dardanelle, Arkansas*, 229 Ark. 697, 318 S. W. 2d 831, App. B, infra, p. 7).

This State Court decision is in direct conflict with the earlier, final adjudication of the Federal Court in this federal action on the same point (R. 96), which held that redemption was not to be allowed after December 1, 1946 and that to allow such redemption would impair assets of the sewer district and rights of Petitioner therein. Further, Petitioner urges that the State Court decision was in direct conflict with the decisions of the Supreme Court of Arkansas itself up to that time, the earlier decisions of which Court had construed and applied redemption statutes in such manner as to limit redemption to the period provided by statute.

The decision of the Supreme Court of Arkansas was in the year 1959. Petitioner here then filed in the Federal Court, in this action, a Petition for Review of The Case and For Rule on Defendant to Show Cause, referring to the decisions of the Arkansas Trial and Appellate Courts, the mandatory orders of the Federal Court which had not been fulfilled toward liquidation of the assets of the sewer district and application of same toward satisfaction of the federal judgment, and praying that the commissioners of

the sewer district be compelled to present a plan for liquidation of the judgment or, in the alternative to award Petitioner writs of execution against the lands purchased by the sewer district at the 1941 foreclosure sale which had been held valid, and praying for such other relief as may be necessary and proper to bring the case to termination (R. 176-190).

The commissioners of the sewer district answered in the Federal Court action (R. 191), it appearing from the answer that all but one of the former land owners had redeemed lands from the foreclosure sale pursuant to the State Court decision permitting redemption of lands over 16 years after the sale, the relief prayed being dismissal of Petitioner's Petition for Review (R. 191). The United States District Judge, J. Smith Henley, then recently appointed Judge, succeeding to the position of Judge Thomas C. Trimble, then rendered the order in this action (denying the Petition for Review) of which review, basically, is sought (R. 207), which became final and appealable by virtue of the final orders of Judge Henley closing the case (R. 225-232).

In the Federal Court's memorandum letter opinion rendered in connection with this order, the Federal Court held that the recent Sate Court decision on redemption, and application of the 5 year redemption statute, in such way as to permit redemption over 16 years after the foreclosure sale, were to be given effect in the federal case (noting that even the one land owner who was not shown to have redeemed land may have by then done so), necessarily holding that the state statute purporting to allow redemption of land from the foreclosure sale only until December 1, 1946, was to be applied in this particular federal action to permit redemption over 16 years later (R. 204, App. B, infra, p. 4). This decision and application of the state statute in the Federal Court action, by Judge

Henley, was in direct conflict with the decision of the same Federal Court, under Judge Trimble. Judge Henley held that the State Court decision in 1958 (affirmed by the Supreme Court of Arkansas in 1959) was to be given full faith and credit in the Federal action.

The Court of Appeals affirmed Judge Henley, by the judgment on May 2, 1964, of which review is here sought. (Appended at end of printed record, p. 9 of appended portion; App. D, infra p. 61). In its opinion, the Court of Appeals held that the State Court decision was to be given full faith and credit in the Federal case and that construction and application of the 5 year redemption statute in such manner as to permit redemption over 16 years after the sale of the lands to the sewer district, in derogation of Petitioner's liens and rights, arising by virtue of the Federal judgment, in the assets of the sewer district, was not an unconstitutional deprivation of Petitioner's rights and did not deprive him of property without due process of law, in violation of the due process clauses of the 5th and 14th amendments to the Constitution of the United States; and the Court of Appeals stated further that Petitioner had not, further, been unconstitutionally deprived of equal protection of the laws under the 14th amendment.

The practical effect of the decision of which review is sought is to make the Federal judgment held by Petitioner uncollectible. In an earlier decision of the Court of Appeals in this same proceeding, it has already been decided that no additional assessments can be levied on lands in the sewer district in order to pay the Federal judgment (based on bonds which financed the sewer system for the lands). *Whitaker & Co.* v. *Sewer Improvement No. 1*, 221 Fed. 649; App. C, infra, p. 32.

REASONS FOR GRANTING THE WRIT

1. A substantial part of all public improvements in the United States, such as roads, utility systems and

bridges, have been and are being constructed by local improvement districts, which finance the costs by issuance of bonds secured by lien on assessments against lands benefitted by the improvements. Decisions and applications of state and federal laws in such manner as, in fact, to defeat payment of the bonds and judgments based thereon are clearly important to the country and affect the public at large. This widespread method of financing public improvements would be seriously affected if, by such decisions, the public invited to lend money to districts by purchase of bonds become uncertain as to their rights to enforce payment of the bonds. The decisions below had the effect of defeating payment of such bonds with the result (in effect) that the sewer district and lands within it acquired and constructed and have used for over 40 years, a public improvement, benefitting them directly, at the expense of the bondholders who financed the improvement, to whose rights petitioner succeeded.

2. This case is important in respect to the relation between the Federal courts and State courts and administration of justice in the two separate judicial systems, and the decisions below are believed to be in conflict with principles established by this Court and applicable decisions of this Court.

This case presents the unusual circumstance in which a Federal adjudication in 1956 was not given any effect whatever in a later State court proceeding, the State court decision being in direct conflict with the earlier Federal decision, and in which, notwithstanding the conflict, the Federal court (when presided over by a different judge than the judge rendering the 1956 decision) gave full faith and credit to the State court decision and application of state law. 28 U. S. C. Sect. 1738, 62 Stat. 947 is directly involved.

The Federal Court, since 1937, had jurisdiction of the litigation and of all property of the sewer district; it had rendered judgment in favor of the bondholders, (now petitioner), had appointed receiver and had taken control over the district's property and affairs and the liquidation of its assets (R. 19, 25). It had ordered liquidation of the assets of the district in 1956 and it had adjudged that the lands involved in this action had become assets of the district to be liquidated toward satisfaction of its judgment rendered in 1937. It had adjudged in 1956 that the lands which had not been redeemed by December 1, 1946, could not thereafter be redeemed. The later State court proceeding nevertheless applied the five-year redemption statute in such way as to permit redemption over 16 years after sale of the lands.

By giving full faith and credit to the State court decision, permitting former landowners to redeem the lands and thus make them no longer assets of the sewer district, the courts below abdicated Federal jurisdiction over the case and rendered decisions in conflict with the principles enunciated by this court in *Kline* v. *Burke Construction Co.*, 260 U. S. 226, 43 S. Ct. 79, 67 L. Ed. 226; *United States* v. *Bank of New York & Trust Co.*, 296 U. S. 463, 56 S. Ct. 343, 80 L. Ed. 331.

The State court decision, when given effect by the courts below, effectively relieved the sewer district from paying a judgment which had already been recovered in the Federal court and superseded a Federal adjudication on the issue of right of redemption of land which had been rendered previously in the Federal action. This interference with Federal jurisdiction and Federal control over the property involved was unlawful and emasculated the jurisdiction of the Federal court contrary to the principles established by this Court. *Riggs* v. *Johnson County Supervisors*, 73 U. S. 166, 6 Wall. 166, 18 L. Ed. 768; *Supervisors* v. *Durant*, (*Board of Supervisors of the County of Wash-*

ington v. *United States*), 76 U. S. 415, 9 Wall. 415, 19 L. Ed. 732.

If the State court proceeding could thus interfere with the Federal proceedings, Federal jurisdiction is a myth. It is at the mercy of state tribunals. (*Supervisors* v. *Durant, supra.*)

The State court decision erroneously did not, itself, give full faith and credit to the prior adjudication of the federal court in 1956 (to the effect that the unredeemed lands were assets of the district to be liquidated toward satisfaction of petitioner's judgment). That this Federal decision was entitled to full faith and credit in the State proceeding seems clear. *Hancock National Bank* v. *Farnum*, 176 U. S. 640, 20 S. Ct. 506, 44 L. Ed. 619; *Stoll* v. *Gottlieb*, 305 U. S. 165, 59 S. Ct. 134, 83 L. Ed. 104. This rule was enunciated unequivocally in *Kersh Lake Drainage District* v. *Johnson*, 309 U. S. 485, 60 S. Ct. 640, 84 L. Ed. 881. In that case this Court found that the State court had given full faith and credit to a prior Federal decision, but left no doubt but that the requirement in fact there fulfilled was a requirement of law. In the State court decision, incorporated into the present Federal action, the requirement was not fulfilled.

Further the courts below erred in giving full faith and credit to the state court decision against the claim that the state court decision and the application of the redemption statute to permit redemption after the redemption period expired were constitutionally void, as Petitioner will urge here. If the state court decision and application of state law were constitutionally void the full faith and credit to them should not have been given. *Old Wayne Mutual Life Association* v. *McDonough*, 204 U. S. 8, 27 S. Ct. 236, 51 L. Ed. 345; *Griffin* v. *Griffin*, 327 U. S. 220, 66 S. Ct. 556, 90 L. Ed. 635.

3. The courts below erroneously determined an important State question in a way in conflict with applicable state law. The applicable state law was that in effect at the time the rights of the parties were created and established—the issuance of bonds and mortgage in 1917 and the state foreclosure sale in 1941 at direction of the Federal court, rather than a 1959 construction of the state law, created long after petitioner's rights had become vested.

Further, this being a Federal action with jurisdiction based on diversity of citizenship, the courts below, in the exercise of Federal jurisdiction, erroneously determined that the construction placed on a five-year redemption statute in 1958 and 1959 by State courts was to be applied in the Federal action, rather than the state laws as construed and applied when petitioner's rights were established. *Tidal Oil Co.* v. *Flanagan,* 263 U. S. 444, 44 S. Ct. 197, 68 L. Ed. 382; *Gelpcke* v. *Dubuque,* 68 U. S. 175, 1 Wall. 175, 17 L. Ed. 520.

Under applicable state law, ownership of the lands had vested in the sewer district for the benefit of petitioner and were assets of the sewer district to be liquidated and applied to satisfaction of petitioner's judgment, and the former landowners' right to redeem from the 1941 foreclosure sale had expired December 1, 1946.

The Federal Court had so adjudged in 1956 in this proceeding. The law of Arkansas applicable at the time of the Federal court decision and at the earlier times of the vesting of petitioner's rights was that the *ownership* of the lands had vested in the sewer district. In *Baur* v. *Gwaltney,* 191 Ark. 1030, 88 S. W. 2d 1005, (1935), the Supreme Court of Arkansas held that when land is legally sold to an improvement district, and the period of redemption has expired as provided by law, the title thereto "*becomes absolutely vested*" in the district, which rights the

legislature is without power to take away. The decision in that case was that a statute enlarging redemption time, after the redemption period under prior law has expired, is unconstitutional and void because it disturbs vested rights in property. The law was the same at the time the bonds and mortgage which furnished the basis for this action were issued, when the contract and property rights involved were created. In *Brasch* v. *Mumcy*, 99 Ark. 325, 138 S. W. 458, (1911), the Arkansas Court's holding was, in respect to property rights acquired by foreclosure sales: "After the Commissioner's sale is confirmed, the rights of the purchaser relate back to the date of the same made by him, and the purchaser is then considered *the owner* from and after that date." In the same case, the Court held that the right of redemption of former landowners is only statutory and must be asserted in the time and manner named in the statute creating the right, and that courts cannot by construction extend the time or vary the terms of the statute under which such right can be exercised. The Court held that subsequent proceedings, such as confirmation of the sale, only gives the court's sanction to *something that has already taken place* (the sale and passage of title) and authorizes the commissioner to execute the deed. *Shuman* v. *Cherry*, 215 Ark. 342, 220 S. W. 2d 817, (1949), again confirmed that five years, and no more, is the applicable redemption period.

Actually the Court of Appeals cited and referred to a section of a statute enacted in 1937 (Vol. 2B, Ark. Stats. 1947 Annotated, Sect. 20-444) and a statute enacted in 1949, Id. Section 20-446.1 (long after petitioner's rights had been created by issuance of the bonds), and the 1949 statute was enacted after the period of redemption under former, applicable statutes had expired). Kirby & Castle Digest of the Statutes of Arkansas, Sections 6873 and 6874, Act 43 of 1915, Section 1.

The Court of Appeals gave undue weight to the fact that the state court officer who conducted the foreclosure sale had not in fact issued deeds to the sewer district after the redemption period expired December 1, 1946. The ownership of the lands had already vested absolutely in the sewer district under applicable state law and under adjudication of the Federal District Court itself. The issuance of deeds had long ago been ordered even by the state chancery court in which the foreclosure sale occurred. The actual signing of deeds should have been regarded a mere ministerial act to evidence ownership already vested. Under state statutes themselves such duties could be enforced even by mandamus. Act 84 of March 22, 1881, of Arkansas Acts, Section 26, at page 177.

Petitioner submits that under applicable law, the decisions below were erroneous.

4. Application of a redemption statute in such manner as to enlarge the period of redemption after the time for redemption had expired under prior law and under prior construction and application of redemption statutes, in effect when petitioner's rights were created, unlawfully impairs the obligation of contract in violation of Article I, Section 10, of the Constitution of the United States. *Barnitz v. Beverly*, 163 U. S. 118, 16 S. Ct. 1042, 41 L. Ed. 93, in which this Court, in holding unconstitutional a change in law to permit redemption, where none had been provided in the law in force when the mortgage was granted, the Court said: "If such rights may be added to the original contract by subsequent legislation it would be difficult to say at what point they must stop . . . and the right of redemption may be so prolonged as to deprive the mortgagee of benefit of his security by rendering the property unsaleable for anything like its value." 163 U. S. 118, at 124; 41 L. Ed. 93, at 99.

The decision below is in conflict with *W. B. Worthen Co.* v. *Kavanaugh*, 295 U. S. 56, 55 S. Ct. 555, 79 L. Ed. 1298, in which the opinion of the Court notes that by such changes in the rights under a mortgage, the state law takes from it the quality of an acceptable investment for a rational investor, and that when extensions are so piled up as to make the remedy a shadow, such extensions are invalid. In that case the application of state law was challenged as violating both the clause prohibiting impairment of contracts and the due process of law clause.

The laws in force when the bonds and mortgage securing it were issued formed a part of the contract, and the five-year redemption provision could not constitutionally be altered either by subsequent legislation or by decision of state courts altering the construction and application of the provision to permit redemption over 16 years after sale to the sewer district. *Gelpcke* v. *Dubuque*, 68 U. S. 175, 1 Wall. 175, 17 L. Ed. 520.

5. The courts below found that petitioner had not been deprived of constitutional rights (due process and equal protection) solely on the basis that ownership of the lands involved had not become vested in the sewer district (for benefit of petitioner). The opinion of the Court of Appeals expressly excluded from its decision the question whether petitioner would have been deprived of such rights if deeds evidencing ownership had been issued to the sewer district upon expiration of the five-year period of redemption, and, nevertheless, the state law had been applied to permit redemption over 16 years after the foreclosure sale. As noted in this portion of the petition, ownership had vested under applicable law and under specific decision of the Federal court in 1956, and the decisions below were erroneous in holding the contrary, and the application of state law did deprive petitioner of such constitutional rights by the redemptions permitted and sanctioned over 16 years after

sale to the sewer district. Analogy can well be made to removal of a bar of a statute of limitation by subsequent law passed after the bar has become perfect and after ownership of property has become vested by virtue of the statute of limitation later cancelled. In *Campbell* v. *Holt*, 115 U. S. 620, at 623, 6 S. Ct. 209, at 211, 29 L. Ed. 483, at 485, it is said that such disturbance of vested rights would deprive the holder of property without due process of law. Further, here, the granting of redemption over 16 years after sale, was an unreasonably long extension, not justified by any suggestion of public emergency, and amounted to a taking without due process. Cf. *Block* v. *Hirsh*, 256 U. S. 134, 41 S. Ct. 458, 64 L. Ed. 865; *Home Building and Loan Association* v. *Blaisdell*, 290 U. S. 398, 54 S. Ct. 231, 78 L. Ed. 413.

6. The decisions of the courts below of which review is sought superseded and nullified the decision of Judge Trimble in 1956 in this same action which was an adjudication fixing petitioner's rights, on which it had a right to rely. No appeal was taken from the 1956 adjudication. The later opinions of the courts below merely ignored it, gave full faith and credit to the State court decision, and rendered later decisions in the Federal proceeding in conflict with the former and then refused issuance of writs of execution or other relief to enforce the basic judgment. Such circumstances may not have been presented to this Court heretofore. They certainly appear unusual in the administration of law and justice in Federal courts. Petitioner urges that his rights not to be deprived of property without due process of law under Amendment 5 to the Constitution of the United States were thus violated, and that such proceedings were such a departure from the accepted and usual course of judicial proceedings as to call for this Court's attention and correction.

CONCLUSION

This case presents questions of importance warranting review by this Court, and the Petition for a writ of certiorari should be granted.

Respectfully submitted,

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